Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1819

THE UNITED ILLUMINATING COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees,

NEW HAVEN WATER COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees,

THE SOUTHERN CONNECTICUT GAS COMPANY,
Appellant,

against

CITY OF NEW HAVEN, EDWARD CLIFFORD and MARTIN J. GRIFFIN,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM OF DEFENDANTS — APPELLEES

CHARLES G. ALBOM
Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8232
Counsel for Appellees

Of Counsel:
CLARINE NARDI RIDDLE
Deputy Corporation Counsel
City of New Haven
(203) 787-8234

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The appellees, the City of New Haven, Martin J. Griffin, its Tax Collector and Edward Clifford, its Tax Assessor,[1] move this Court to dismiss the appeal filed by the appellant Companies[2] from the judgment of the Supreme Court of the State

[1]The appellees will hereinafter be referred to as the "City of New Haven" or "New Haven."

[2]The appellants will hereinafter be collectively referred to as the "Companies."

of Connecticut on the ground there is no substantial federal question presented or, in the alternative, to affirm the judgment below because, in view of previous decisions, the questions presented by the appellant Companies are so wanting in substance as not to need further argument.

Opinions Below

The opinion of the Supreme Court of Connecticut is reported at Conn. , A 2d , 41 Conn. L. J. No. 34 at 1 (February 19, 1980), (S.Ct. Conn.), and is reproduced in the Appendix to the Jurisdictional Statement at 1A-22A. The Memorandum of Decision of the Superior Court, Judicial District of New Haven, is unreported and is reproduced in the Appendix to the Jurisdictional Statement at 23A-50A.[3]

Jurisdiction

The judgment of the Supreme Court of the State of Connecticut was entered on February 19, 1980 (J.S. App. 1A). The notice of appeal was timely filed on March 27, 1980 (J.S. App. 51A), and the Jurisdictional Statement was filed on May 16, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

Question Presented

The Connecticut Legislature sought by statute to correct imbalances in municipal ad valorem practices theretofore existing. It mandated by statute that in municipalities where real estate assessments were based on valuations more than 10 years old that immediate revaluation be carried out by the assessor. The next precedent statute permitted assessors to use valuations of real estate as much as 19 years old. The Connecticut Legislature

[3]The Appendix to the Jurisdictional Statement will hereinafter be referred to as "J.S. App."

also mandated by statute that the same uniform percentage of value be applied to real and personal property to establish an assessment basis whereas previously real estate had been assessed at a percentage (60%) of value more favorable to it than that applied to personal property (70%). Both types of property were now to be assessed at 70% of value.

In the City of New Haven, the next previous general real estate revaluation had taken place 14 years before 1978. Real estate had been assessed previously at 60% of 1964 values and personal property at 70% of current value. In 1978, the City of New Haven carried out a general revaluation of real estate as the corrective statute required.

The corrective legislation aforesaid would, if given immediate whole force, have had the effect of compressing many years of inflation in real estate valuations into an immediate basis for tax and the added effect of increasing that basis by the simultaneous application of the higher (70%) percentage of value rather than the precedent 60%.

The legislature accordingly permitted municipalities which following revaluation would have a specified substantial percentage increase in the total real estate grand list[4] to phase-in the increase in assessments on real estate parcels in equal installments over a period of five successive years.

5% of the parcels of real estate in New Haven had not inflated in value from 1964 to 1978.

The plaintiffs attack the phase-in as costing them more in taxes than if the corrective statutes were to take immediate whole effect without phase-in application. They say that one of the parcels of real estate they own had not inflated in value and hence phase-in accords a benefit to other real estate owners not afforded them; that personal property which had been continu-

[4]Where the total real estate grand list inflated after revaluation by at least 30%.

ously up-dated in valuation did not benefit under phase-in and so was denied equal protection of the law.

It is probable that such burden of taxation as will be removed from real estate will devolve primarily on personal property.

The Supreme Court of Connecticut ruled against plaintiffs' claims. The Connecticut Supreme Court held that the legislature could rationally perceive that a significant state and social purpose was served by the phase-in provision and gradualism in corrective procedures; that giving immediate whole effect to the corrective procedures could be rationally conceived to be unduly harsh on home owners and to have an unwholesome social effect on an already poor real estate market; and that the appellants had not sustained their burden of proof by a showing to the contrary beyond a reasonable doubt as the decisions of this court required. Long established constitutional decisions of this court have held that the equal protection clause does not require that a state must choose between attacking every aspect of a problem or not attacking the problem at all; neither can legislation be condemned where it imperfectly effectuates a legislative goal. Is not the question raised by the appellants so plainly foreclosed by previous equal protection decisions of this court in the area of state taxation that they are wanting in substance and present no substantial federal question?

Statutes and Ordinances Involved

Section 12-62 of the Connecticut General Statutes which directs municipalities which used values more than ten (10) years old as a base for ad valorem municipal assessments of real estate to immediately update the values to reflex 1978 values and for periodic revaluation thereafter is reproduced at J. S. App. 4A, n. 4. Section 12-62a (b), which requires that all property, real and personal, be assessed for purposes of municipal property tax at a uniform rate of seventy per cent (70%) of true and actual value; Section 12-62a(e), which authorized certain municipalities to "phase-in," over a five (5) year period the in-

crease in assessed value of individual parcels of real property; and the Ordinance of the City of New Haven, "Providing For Staged Increases in Certain Real Property Tax Assessments," which implements the provisions of Section 12-62a(e) of the Connecticut General Statutes, are reproduced in the J. S. App. 4A-7A.

Statement of Case

1. Effective in 1978 the Connecticut Legislature directed the Tax Assessors in each municipality, including the City of New Haven, to revalue all *real* property within its jurisdiction no later than ten (10) years following the last preceding revaluation, (Conn. Gen. Stat. Sec. 12-62) and to assess that real property at a uniform rate of seventy per cent (70%) of its true and actual value. (See Conn. Gen. Stat. Sec. 12-62a(b)). This latter rate of assessment represented an increase of ten per cent (10%) over the previous rate of assessment authorized by the Connecticut Legislature and utilized by the City of New Haven during its last previous revaluation in 1964 (See J.S. App. 4A). Personal property within New Haven is revalued every year and is assessed at a uniform rate of seventy per cent (70%), consistent with state law. Id. The City of New Haven's ad valorem real and personal proprty tax, like all other municipalities in Connecticut, is imposed on the property's "assessed value." Thus, the Legislature both required a revaluation of real property for tax purposes plus an increased uniform rate of assessing such property's value; a "potentially . . . significant 'double barrel' tax impact" (J. S. App. 20A) on the owners of appreciated real property.

In 1978 the Connecticut Legislature enacted Public Act 78-256, Conn. Gen. Stat. Sec. 12-62a(e). It authorized the legislative body of a municipality, whose "revaluation has resulted in an increase in the *total* assessed value of *all real* property on the assessment list in the year immediately preceding such revaluation of no less than thirty per cent (30%) of such total assessed

value" (J. S. App. 5A, n. 6) (emphasis added), to allow unto *individual real* property owners a deferment of " 'all or any part' of the *increase* in assessment provided that the amount deferred is phased in in equal amounts over a period not to exceed five years from the year of revaluation" (J. S. App. 5A) (emphasis added), which, in the case of New Haven, is 1978; for the last revaluation in New Haven had been in 1964.

This "phase-in" was, of course, applicable only to real, and not personal, property and only to those pieces of real property whose revaluation had resulted in a higher assessment (J.S. App. 5A).

2. Pursuant to Sec. 3 of Public Act 78-256, Conn. Gen. Stat. 12-62a(e), the legislative body of the City of New Haven, the Board of Aldermen, enacted an Ordinance providing that any increased assessment on any real property as a consequence of revaluation "shall be divided into five (5) equal increments, and each of said increments shall be effective on each of the succeeding five list years, thereby successively increasing each such . . . real property assessment increase until the full [70%] assessment originally fixed in . . . 1978 is implemented" (J.S. App. 6A, n. 7), by 1982. The result of the City of New Haven's 1978 evaluation was that the true and actual value of all real property was $842,519,410 on October 1, 1977, and $1,264,915,897 on October 1, 1978, an increase of approximately 50 per cent (50%) (J.S. App. 7A). This result "activated" the provisions of Public Act 78-256, Conn. Gen. Stat. Sec. 12-62a(e), and the Board of Aldermen's Ordinance. Ninety-five per cent (95%) of the parcels of real property within the City increased in value and assessment, and were thus eligible for the "phase-in's" protection (J.S. App. 47A).

Not surprisingly, by reducing to one-fifth the increase in the assessed value of real property subject to taxation for 1978, the "phase-in" had statistical effects in New Haven. It resulted in an assessed value which was 43.5 per cent (rather than 70 per cent (70%) without the phase-in) of the true and actual value of all real property in New Haven (J.S. App. 7A). Con-

sequently, in order for the City to maintain adequate tax revenue, the *rate* of taxation increased (i.e. 66.5 mills with the phase-in rather than 47.3 mills without it) (J.S. App. 8A). Additionally, because the "phase-in" was not beneficial to that small percentage of real property whose value had not inflated since 1964 (1977 base), (5% of all real estate parcels) owners of such property were assessed at the full 70% uniform rate in 1978. And, of course, owners of personal property continued to be assessed at the full 70% uniform rate (J.S. App. 7A).

3. In March, 1979, the Companies, owners of real or personal property in New Haven, the major suppliers of heat, light and water, and all required to pay more taxes on their real and personal property in the first year of the "phase-in," than if phase-in were not in effect, sought declaratory and injunctive relief against the City of New Haven in the Superior Court for the Judicial District of Connecticut. They alleged that Public Act 78-256, and the Board of Aldermen's Ordinance implementing it, violated the Equal Protection Clause of the Connecticut Constitution and the Fourteenth Amendment to the Consitution of the United States (J.S. App. 24A).[5] The standard of review urged by the Companies was that the existence of "systematic and intentional undervaluation for tax purposes of certain pieces of real property" (J.S. App. 33A), rendered the challenged state statute violative of equal protection. The trial court granted unto the Companies the relief requested (J.S. App. 49A, 50A). The Supreme Court of Connecticut reversed. It did so on the ground that

> "Where legislation, such as the phase-in act and ordinance, which neither contains a suspect classification nor impinges on a fundamental right is challenged on equal protection grounds, we have stated that the plaintiff to prevail must establish that the statutory classification is without rational basis." (J.S. App. 9A) (See also J.S. App. 10A, 11A).

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[5]It has long been recognized by the Connecticut Supreme Court that the equal protection clause in both constitutions "have a like meaning and impose similar constitutional limitations"; *See* J.S. App. 8A, 9A.

It found that the Connecticut Legislature could have reasonably concluded that in towns where the valuation next precedent to 1978 was long antiquated, that the coincidence of (1) the newly mandated immediate revaluation compressing many years of inflation and (2) the raise in percentage of actual value of real estate mandated to be taken for the assessment base—from 60% to 70%—established a classification of property that required a phase-in to protect against overly harsh results upon numerous owners of real property (especially home owners) and upon the economic viability of whole communities. (J.S. App. 16A, 19A).

It further found that there was a logical legislative rationale for a classification affording phase-in to municipalities where the over-all rise in the total grand list for real estate was 30% or more while denying the same to other municipalities. Qualification of a municipality for phase-in, it opined, was dependent on "sufficient overall impact in terms of increased assessment to justify the legislative remedy made available by the act. Additionally, municipalities not having the threshold increase of 30% are prevented from incurring the administrative costs of implementing a phase-in program; the use of the act is confined to those municipalities in which the potential of significantly enlarged tax burdens on real property owners or the possible disruption of the real estate market is sufficiently substantial to justify the administrative costs of the phase-in program." (J.S. App. 18A). It concluded that where a city-wide problem does not exist and the overall real estate assessments do not necessitate a phase-in of assessments, the act cannot be used solely to benefit selected individuals or for other political purposes (J.S. App. 19A).

Moreover, in reference to the "major thrust" of the Companies' argument that the distinction between real property that has appreciated and that which has not violated the equal protection clause of the Connecticut and Federal Constitutions (J.S. 20A), the Court concluded that only owners of appreciated real property potentially faced the " 'double barrel' tax impact" (J.S. App. 20A) and "are precisely those who would otherwise be

threatened with the greatest increase in assessment" (J.S. App. 20A, 21A) and needed delay in the full impact of coincidence of revaluation and the rise of percentage rate of assessment of valuation. While the distinction may prolong certain inequities, the Court found they are only temporary in nature (J.S. App. 21A), and "it cannot be disputed that the legislature may proceed one step at a time to remedy a harm" (J.S. App. 21A).

The Supreme Court of Connecticut further concluded that the Companies' contention that the concerned legislation did not confer upon personal property a phase-in benefit like unto real property was not of constitutional significance because "realty and personalty are not part of a class of like property" (J.S. App. 13A). It observed as to the ameliorative effect of phase-in on real property assessments that:

> ". . . The legislature may well have feared that although the appreciation in the value of that property may have been gradual over the years, the cumulative appreciation may have been so substantial that when reflected in the subsequent assessment, forced sales, foreclosures, and other conceivable hardships might result." (J.S. App. 19A).

and further that:

> ". . . It is interesting to note that although the act extends to commercial, residential, industrial, and other real property, legislative history reveals that homeowners were of special concern, and the act was intended to insulate them from at least some of the burden of revaluation. See, e.g., 21 H.R. Proc., pt. 10, 1978 Sess., pp. 4237-39; 4241-42; 4249; 4251; 4253." (J.S. App. 19A, 20A).

The restructuring of the assessment process could logically be deemed by the legislature conceptually fairer than the assessment process it was designed to correct. It provided for the cessation of the use of long antiquated values for real estate assessments and for equality in the percentages of real and personal property values to be used in the assessment process. The fact

that for state policy reasons the improvement in the assessment process was in some respects only gradual rather than immediate did not render the legislative concept constitutionally obnoxious. While the argument of the Companies is that they will have to pay more with phase-in operative than without its being operative, there is no showing or analysis in the record that they will pay more than if the legislature had not acted at all, i.e. without the corrective effort having been undertaken.

The theme of the Companies' attack upon the concerned legislation is that it effectuates an "intentional and systematic underassessment" of real property other than its own. That theme and the cases urged to support it are significant only where the legislature has not constitutionally classified property; which is not the case here.

No Substantial Federal Question is Presented

1. The decision of the Supreme Court of Connecticut is based on a thorough and accurate understanding of the well-established principles set forth by this Court in similar challenges to state taxing statutes under the Equal Protection Clause of the United States Constitution. Relying expressly on the case of *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973), as well as others,[6] the Connecticut Supreme Court recognized that "the constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest." Id. at 55. This continues to be the appropriate criterion for measuring state economic regulation, where, as here, the state and city "phase-in" procedure "neither contains a suspect classification nor impinges on a fundamental right" (J.S. App. 13A). See e.g., *City of New Orleans* v. *Dukes* 427 U.S. 297, 303-304 (1976); *County Board of Arlington County, Virginia* v. *Richards* 434 U.S. 5 (1977);

[6]The Court also relied on *Dandridge* v. *Williams*, 397 U.S. 471 (1970); *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 527 (1959); *Louisville Gas and Electric* v. *Coleman*, 277 U.S. 32, 37 (1928); *Carmichael* v. *Southern Coal and Coke Co.* 301 U.S. 495, 509 (1937). See also other cases cited at J. S. App. 13A-16A.

Tribe, *American Constitutional Law* (1978 ed.) Sec. 16 - 5, p. 1000.

The Connecticut Supreme Court concluded, after reviewing a fully developed factual record, that the purpose of the "phase-in" statute and ordinance was to ameliorate the coincidence of revaluation of real estate after fourteen (14) years of inflation with the concurrent raising of the assessment percentage on real estate from sixty per cent (60%) of true and actual value to seventy per cent (70%) of true and actual value on numerous owners of real property, particularly home owners, with whom the Legislature was expressly concerned (J.S. App. 16A, 19A, 20A). These real property owners might be exposed to a dramatic and sudden increase in taxes, and the "double-barrelled" impact of the new statutory structure might precipitate individual foreclosures or create great economic hardship in certain communities. In New Haven, 95 per cent (95%) of the parcels of real property, increased in value and assessment, and were thus eligible for the phase-in's protection. (J.S. App. 47A). Certainly it was rational for the Legislature, in deciding to make more balanced the comparative value of real property (through a current revaluation) and its rate of assessment (now, to be equal to the rate for personal property), to recognize the need to cushion, for a limited period, the potentially harsh effect of these corrective procedures by making them gradually applicable through a "phase-in program." Similar phase-in programs on real property assessment have been upheld elsewhere, *National Can Corp.* v. *State Tax Commission of Maryland,* 220 Md. 418, 153 A.2d 287 (Ct. App. Md 1960), *appeal dismissed,* 361 U.S. 534 (1959), as consistent with this Court's admonition in equal protection challenges that a "large area of discretion . . . is needed by a legislature in formulating sound tax policies." *Madden* v. *Kentucky,* 309 U.S. 83, 87-88 (1940).

2. "In the field of taxation, even more than in other fields, legislatures possess the greatest freedom in classification." They are not required to develop taxation schemes which "resort to close distinctions or . . . maintain a precise, scientific uniformity with reference to composition, use or value," *Allied Stores of*

Ohio, Inc. v. *Bowers,* 358 U.S. 522, 527 (1959). The Legislature may distinguish between *and* among real and personal property, *Ohio Oil Co.* v. *Conway* 281 U.S. 146 (1930); *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 431; *Allied Stores of Ohio, Inc.* v. *Bowers, supra,* and it may recognize the peculiar effects of inflation on property values, *National Can Corp.* v. *State Tax Commision of Maryland, supra,* even if, in doing so, it proceeds one step at a time in remedying a harm or attains its goal in an imperfect manner. *Dandridge* v. *Williams,* 397 U.S. at 486-487. Moreover, "[s]ince the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the *most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Madden v. Kentucky,* 309 U.S. 83, 88 (1940) (emphasis added).[7] The Companies have failed to meet their burden here.

The Companies contend that the "phase-in" procedures create certain objectionable classifications between towns whose total real property value in 1978 exceeded by thirty per cent (30%) the real property value in 1977 and those that did not (J.S. App. 17A); between owners of real property who are subject to the "phase-in" and owners of personal property who are not (J.S. App. 19A); and between owners of real property who benefit from the "phase-in" because the value of their property increased and owners of real property who do not benefit from the phase-in because the value of their property remained the same or decreased (J.S. App. 20A). We agree these "classifications" exist, but, as the Connecticut Supreme Court found, each

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[7]See *San Antonio Independent School District* v. *Rodriguez, supra* at 41. See also *Baldwin v. Fish and Game Commission of Montana* 436 U.S. 371, 388-389 (1978) citing *City of New Orleans* v. *Dukes, supra,* at 433; *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 433; and *State Board of Tax Commissioners of Indiana v. Jackson,* 283 U.S. 527, 537 (1931).

is rationally related to meeting the State's legitimate purpose in enacting the phase-in program and are constitutionally permissible.

a. The Supreme Court of Connecticut found that members of the Legislature, "who enjoy a familiarity with local conditions," *San Antonio Independent School District* v. *Rodriguez, supra,* had a rational basis for selecting the thirty per cent (30%) increase requirement which triggered the act and ordinance. "This percentage increase requirement ensures . . . there is a sufficient overall impact in terms of increased assessment to justify [the phase-in]" (J.S. App. 18A), but that the phase-in procedure will be imposed only on those municipalities in which the potential harm and disruption caused to individual owners or to the area generally justify the attendant administrative costs, (cf. *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 511 (1937)), and additionally, that the "overall" municipal requirement of thirty per cent (30%) precluded the possible selective, individual application of the "phase-in" for political reasons within communities not substantially harmed by the "double-barreled" tax (J.S. App. 18A, 19A).

b. The Legislature, the Court found, also reasonably drew the line between personal and real proprty. Being familiar "with local conditions," (*San Antonio Independent School District* v. *Rodriguez, supra*), especially the tax burden on homeowners and an already poor real estate market (J.S. App. 19A), the fact that revaluations may have not occurred in at least ten years (14 years in New Haven), and the increase it had mandated in the percentage of assessment, the Legislature "may well have feared that . . . the cumulative appreciation [in real property values] may have been so substantial that when reflected in the subsequent assessment, forced sales, foreclosures and other conceivable hardships might result" (J.S. App. 19A) Personal property, which is valued annually, is not generally subject to a sudden and dramatic rise in value. *Id.* Also, being of a different class than realty, it "may be differently classified and taxed, without requirement for equality," *National Can Corp.* v. *State Tax Commission of Maryland, supra,* at 437.

c. Finally, the Companies' contention about the distinction between real property owners whose valuation has increased and those owners whose valuation had remained the same or decreased is confronted directly by the Legislature's fundamental purpose in enacting the "phase-in." "[*O*]*nly* owners of *appreciated* property potentially would face a significant 'double-barrel' tax impact resulting from the coincidence of the . . . mandatory periodic revaluation . . . and [the] . . . uniform assessment rate . . . [O]wners of realty who arguably receive the greatest protection . . . are *precisely* those who would otherwise be *threatened* with the greatest increase in assessment" and the possibility of forced sales, forclosures, and other conceivable hardship (J.S. App. 20A, 21A) (emphasis added). Thus in addition to this distinction having a rational basis, as found by the Connecticut Supreme Court, it also was an *integral part* of the Legislature's 1978 tax program, and reflected "the making of wise decisions with respect to the raising and disposition of public revenues." *San Antonio Independent School District* v. *Rodriguez, supra.* To sustain its contention, therefore, the Companies "would have the Court intrude in an area in which it has traditionally deferred to state legislatures . . . [and] . . . direct the [Connecticut Legislature] either to alter drastically the present [phase-in] system or to throw out the property tax altogether," *San Antonio Independent School District* v. *Rodriguez, supra,* at 40-41.

In the final analysis, the Companies' contentions were subjected to a thorough review in accordance with the correct legal standard and they failed to meet their burden. They raised no jurisprudentially unique arguments in the Court below or in the Jurisdictional Statement filed in this Court. The decision by the Connecticut Supreme Court is consistent with this Court's equal protection decisions, and its own.

The questions raised by all of the appellants are so plainly foreclosed by previous equal protection decisions of this Court in the area of state taxation that they are wanting in substance and present no substantial federal question.

Conclusion

WHEREFORE, the City of New Haven respectfully moves this Court to dismiss the appeals on the ground there is no substantial federal question presented or, in the alternative, to affirm the judgment of the Supreme Court of the State of Connecticut on the ground that the questions presented are so wanting in substance as not to need further argument.[8]

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[8]This Court may wish to summarily affirm the decision by the Connecticut Supreme Court. In view of the fact the questions raised by the Companies are so plainly foreclosed by the previous equal protection decisions of this Court in the area of State taxation, they are so wanting in substance as to make further argument unnecessary. See *City of Boston* v. *Jackson*, 260 U.S. 309, 314 (1922); *Hodges* v. *Snyder*, 261 U.S. 600, 601 (1922).

Respectfully submitted,

CHARLES G. ALBOM
Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8232
Counsel for Appellees

Of Counsel:
CLARINE NARDI RIDDLE
Deputy Corporation Counsel
City of New Haven
195 Church Street
New Haven, Connecticut, 06510
(203) 787-8234

Certificate of Service

Charles G. Albom, a member of the Bar of this Court, hereby certifies that the copies of the foregoing Motion To Dismiss or Affirm has been sent by first class mail, postage prepaid, to the attorneys for the appellants in the above-entitled case, on this 10th day of June, 1980, as follows:

1) John W. Barnett, Esq.
   195 Church Street
   New Haven, Connecticut, 06508

2) Donald F. Keefe, Esq.
   205 Church Street
   New Haven, Connecticut, 06509

3) Wiggin & Dana, Esqs.
   Madeline F. Grossman
   195 Church Street
   New Haven, Connecticut, 06508

4) Tyler, Cooper, Grant, Bowerman & Keefe, Esqs.
   Barry C. Hawkins and Susan J. Bryson
   205 Church Street
   New Haven, Connecticut, 06509

CHARLES G. ALBOM
Counsel for Appellees